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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

* * *

LOWELL LABERTEW, an individual; and SANDRA LABERTEW, an individual, Plaintiffs, vs. C&R FINANCIAL INC., an entity of unknown form; GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, a California Corporation; RAYMOND JACOB ROSKOWICZ, an individual; RICK WILKES, an individual; BEVERLEE WILKES, an individual; and DOES 1-10, inclusive, Defendants. ____________________________________ RICK WILKES, an individual; and BEVERLEE WILKES, an individual, Cross-Complainant, vs. C&R FINANCIAL INC., an entity of unknown form; GOLDEN EMPIRE MORTGAGE, INC., a California Corporation dba CIB FUNDING; RAYMOND JACOB ROSKOWICZ, an individual; LOWELL LABERTEW, an individual; SANDRA LABERTEW, an individual, and ROES 1-50, inclusive, Cross-Defendants. ____________________________________	**CASE NO. 07CV2092W (LSP)** *Complaint filed 10/31/07* *Trial Date: Not Set* **COUNTER-CLAIM**

GOLDEN EMPIRE MORTGAGE, INC., a California Corporation dba CIB FUNDING, Counter-Claimant, vs. LOWELL LABERTEW, an individual; SANDRA LABERTEW, an individual, C&R FINANCIAL INC., a resigned California corporation; RAYMOND JACOB ROSKOWICZ, an individual; RICK WILKES, an individual; BEVERLEE WILKES, an individual; and MOES 1-10, inclusive, Counter-Defendants.	))))))))))))))))))

COMES NOW Counter-Claimant, GOLDEN EMPIRE MORTGAGE, INC., a California Corporation dba CIB FUNDING, complain and allege against counter-defendants, LOWELL LABERTEW, an individual; SANDRA LABERTEW, an individual, C&R FINANCIAL INC., a resigned California corporation; RAYMOND JACOB ROSKOWICZ, an individual; RICK WILKES, an individual; BEVERLEE WILKES, an individual; and MOES 1-10, inclusive, inclusive, as follows:

COMMON ALLEGATIONS

1. Counter-Claimant, GOLDEN EMPIRE MORTGAGE, INC., is, and at all times mentioned herein was, a California Corporation headquartered in Bakersfield, Kern County, California, and doing business as CIB FUNDING in Riverside County and San Diego County, California.

2. Counter-Claimant is informed and believes, and thereupon alleges, that counter-defendants, LOWELL LABERTEW and SANDRA LABERTEW, are, and at all times mentioned herein were, married individuals, residing in the County of San Diego, State of California (hereinafter collectively ñLABERTEWò).

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3. Counter-Claimant is informed and believes, and thereupon alleges, that counter-defendant, C&R FINANCIAL, INC., at all times mentioned herein was a California corporation doing business in Riverside County and San Diego County, California (hereinafter "C&R"), the corporate status of which is presently resigned.

4. Counter-Claimant is informed and believes, and thereupon alleges, that counter-defendant, RAYMOND JACOB ROSZKOWICZ, is, and at all times mentioned herein was, an individual residing in Riverside County, California, and doing business in Riverside County and San Diego County, California individually and/or as C&R (hereinafter " ROSZKOWICZ ").

5. Counter-Complainant is informed and believes, and thereupon alleges, that counter-defendants, RICK WILKES and BEVERLEE WILKES, are married individuals residing in the State of Oregon, and doing business in the County of San Diego, State of California (hereinafter collectively ñWILKESò).

6. The true names and capacities, whether individual, corporate, associate or otherwise, of Cross-Defendants MOES 1 through 10 inclusive are unknown at this time, and are therefore sued by such fictitious names. Counter-Complainant is informed and believes, and thereon alleges, that each of the counter-defendants designated herein as a MOE counter-defendant was the agent, assign, parent company, affiliate, wholly owned subsidiary, employee, officer or servant of each of the remaining counter-defendants, and each of them, and in doing the actions and in carrying on the activities described herein was acting within the course and scope of said agency, employment, position or servitude. Counter-Claimant will amend this Counter-Claim to allege the true names and capacities when they are ascertained.

7. Counter-defendants, LOWELL LABERTEW, an individual; SANDRA LABERTEW, an individual, C&R FINANCIAL INC., a resigned California corporation; RAYMOND JACOB ROSKOWICZ, an individual; RICK WILKES, an individual; BEVERLEE WILKES, an individual; and MOES 1-10, inclusive, are referred to hereinafter collectively as ñCounter-Defendants, and each of them.ò

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8. Counter-Claimant is informed and believes, and thereupon alleges, that at all times mentioned herein, the real property at-issue, identified by LABERTEWôS Complaint as 4515 Diane Way, San Diego, California 92117 (the ñProperty), thereby conferring jurisdiction upon this District Court.

9. On or about December 21, 2007 LABERTEW filed their First Amended Complaint in this Court against GOLDEN EMPIRE MORTGAGE, INC. dba CIB FUNDING, C&R FINANCIAL INC., RAYMOND JACOB ROSKOWICZ, RICK WILKES, and BEVERLEE WILKES alleging violations of the Truth in Lending Act, Home Ownership, Equity Protection Act, Rosenthal Act and California Financial Code, as well as alleging breach of fiduciary duty and fraud, generally seeking to quiet title to the Property, rescission of a residential loan and damages associated therewith.

10. On or about March 7, 2008 WILKES filed their Cross-Complaint against LOWELL LABERTEW, SANDRA LABERTEW, C&R FINANCIAL INC., RAYMOND JACOB ROSKOWICZ, GOLDEN EMPIRE MORTGAGE, INC. dba CIB FUNDING, RICK WILKES, and BEVERLEE WILKES alleging fraud, intentional misrepresentation, fraudulent inducement, breach of fiduciary duty, implied indemnity, equitable indemnity, contribution, negligence and declaratory relief.

I

FIRST CAUSE OF ACTION

[Equitable Indemnity]

11. Counter-Claimant refers to and incorporates herein by reference as if fully set forth at length each and every allegation contained in Paragraphs 1 through 10, inclusive, of the ñCommon Allegationsò as if set forth *verbatim* herein.

12. That if Counter-Claimant is subject to liability to LABERTEW and/or WILKES by reason of the allegations and charges of LABERTEW and/or WILKES in this action, although this is specifically denied, then and in that event any such obligation and liability on the part of Counter-Claimant can and will be solely the result of active and/or primary fault, consisting of active and/or primary negligence, breach or other wrongdoing on the part of Counter-Defendants,

and each of them, as opposed to a lack of negligence or secondary or passive negligence on the part of Counter-Claimant, and as a result thereof, Counter-Claimant is entitled to be indemnified and reimbursed by Counter-Defendants, and each of them, in the amount of any such sum that might be or could be found or said to be due from said Counter-Claimant to LABERTEW and/or WILKES, together with any and all expenses incurred in defense of said action by way of investigation, attorney's fees and costs of every kind and nature.

II

SECOND CAUSE OF ACTION

[Comparative Equitable Indemnity]

13. Counter-Claimant refers to and incorporates herein by reference as if fully set forth at length each and every allegation contained in Paragraphs 1 through 10, inclusive, of the ñCommon Allegationsò as if set forth *verbatim* herein.

14. That if Counter-Claimant is subject to liability by reason of the allegations and charges of the LABERTEW Complaint and/or WILKES Cross-Complaint in this action, although this is specifically denied, then and in that event the total, or a portion of the total of such obligation and liability on the part of Counter-Claimant can and will be the result of the fault, breach of duty, negligence or other wrongdoing on the part of Counter-Defendants, and each of them. Such Counter-Defendantôs, and each of their, fault, breach, negligence or other wrongdoing would be and at all times herein mentioned was concurrent with that of Counter-Claimantôs, if any there may have been, and as a result thereof, Counter-Claimant is entitled to be partially indemnified and reimbursed by Counter-Defendants, and each of them, in the amount of any such sum that might be or could be found or assessed to be due from said Counter-Claimant to LABERTEW and/or WILKES, together with a proportionate amount of any and all expenses incurred in the defense of said action, by way of investigation, attorney's fees and costs of every kind and nature.

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III

THIRD CAUSE OF ACTION

[Declaratory Relief]

15. Counter-Claimant refers to and incorporates herein by reference as if fully set forth at length each and every allegation contained in Paragraphs 1 through 10, inclusive, of the ñCommon Allegationsò as if set forth *verbatim* herein.

16. An actual controversy exists between the parties concerning their respective rights and duties because Counter-Claimant contends that it is not liable, responsible or otherwise properly joined in this action, said contention being disputed by LABERTEW and WILKES, with respect to this litigation, proper application of indemnification, facts of the case and the rights and liabilities of each party as against the other. Counter-Claimant requests that this court declare and determine the relative rights, liabilities and responsibility or other fault attributable to the parties hereto, which proximately caused the injuries of LABERTEW and/or WILKES, if any at all, and that this court thereafter declare that Counter-Claimant is entitled to be indemnified by Counter-Defendants, and each of them, for the amount of such judgment in proportion to the negligence or other fault attributable to said cross-defendants, including damages incurred by Counter-Claimant as a result of the tort or wrongdoing of another.

WHEREFORE, Counter-Claimant, GOLDEN EMPIRE MORTGAGE, INC. dba CIB FUNDING, prays for judgment against Counter-Defendants, and each of them, as follows:

i. That LABERTEW take nothing by way of their Complaint;

ii. That WILKES take nothing by way of their Cross-Complaint;

ii. That in the event of a judgment being rendered against Counter-Claimant herein in favor of any counter-defendant in the above-entitled action, Counter-Claimant herein have judgment in an equal amount over and against Counter-Defendants, and each of them;

iii. That in the event of a judgment being rendered against Counter-Claimant herein in favor of any counter-defendant in the above-entitled action, Counter-Claimant have judgment against Counter-Defendants, and each of them, in proportion to the comparative negligence of Counter-Defendants, and each of them, which proximately caused the injuries to LABERTEW and/or WILKES, if any;

iv. That Counter-Claimant have judgment against Counter-Defendants, and each of them, for Counter-Claimantôs expenses and attorney's fees, in defending themselves against the claims of LABERTEW and WILKES herein;

v. That this court declare and decree upon determination of this case all of the rights and liabilities of all parties hereto with respect to this litigation, indemnification, facts of the case, credits and/or setoffs and the rights and liabilities of each party as against the other;

vi. That Counter-Claimant be awarded its costs of suit incurred herein; and,

vii. For such other and further relief as the court may deem just and proper.

DATED: March 27, 2008

CLIFFORD & BROWN

By /s/ JEREMY J. SCHROEDER
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JEREMY J. SCHROEDER, ESQ.
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CIB FUNDING